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PUBLIC
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FHWA DOCKET NO MC 92-4
RM 4232 HCC-10
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FHWA-92-2180-32

MC 92-4 proposes to implement Sections 8 and 15 of the Hazardous Material Uniform Safety Act of 1990. Part 397 of the Federal Motor Carrier Safety Regulations would be amended under this proposal. The proposed amendment involves a new section titled, "Subpart B Motor Carrier Safety Permits." This notice of proposed rulemaking asks several questions which this response comments upon. In addition, we have comments on related issues that arise in the Notice of Proposed Rulemaking.

The proposal would add new definitions for various hazardous material terminology in Section 397.39. New terms include "designated high-risk hazardous materials" (HRHM), "extremely toxic by inhalation materials" (PIH/A), and "in bulk." The definitions use the classes to be implemented by **HM-181** but group them into new categories. In bulk means something completely different than it does under 171.8. Locating hazardous materials definitions in a section which the regulated community does not have ready access to present possible compliance difficulties.

The proposal also provides detail regarding the implementation of Section 15, which requires, in part, inspection of each movement of commercial motor vehicles carrying highway-route controlled quantities of radioactive materials (HRCQ). The Federal Highway Administration (FHWA) reviewed the inspection criteria of the North American Standard/Commercial Vehicle Safety Alliance (NAS), the jointly developed Department of Energy/Commercial Vehicle Safety Alliance (CVSA), Radioactive Waste (DOE), and the Research and Special Programs administration guidelines (RSPA). FHWA proposes to ignore all three of the above and utilize the guidelines

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found in FMCSR 396.17 and Appendix G (396/G). 396/G is closer to DOE than NAS in some respects in that in many instances it does not allow any deviation/violations, i.e., windshield wipers, brake line defects, etc.

The inspection criteria would adopt the inspector criteria of 396.19. That criteria does not require knowledge of radiological monitoring (RM). The DOE guidelines mandate additional course work in RM prior to inspecting high-level waste shipments, and in response to FHWA question on whether RM should be included, we would answer emphatically yes! To meet FHWA's stated goals of "enhancing motor carrier safety" and "promoting safe transportation" without instituting RM would be counter productive to FHWA's mission statement. Adoption of the proposed standards would result in inspectors not being as well trained or as safe as those personnel following DOE/CVSA standards. Adopting standards which are less stringent than those in place in various states would seem to be a step backwards; in Oregon, Oregon Administrative Rule 860-66-070 requires a mechanical inspection and OAR 345-60-007 requires a radiological inspection of all HRCQ vehicles.

The second question asked is should the permits be expanded to include Hazard Zone B materials, as well as PIH/A (in quantities greater than 1 liter). The adoption of Hazard Zone B criteria would greatly expand the number of products subject to permitting. The defining criteria found in 173.116 and 173.133 is quite technical (it is based on "LC," lethal concentration (rat kill) measurements. Given the increased number of affected entities if enacted, we do not believe safety would be increased by having those parties be permitted. As an example, all shipments of chlorine would require permitting, as well as many pesticide movements.

Next, FHWA requests information on identifying the size of the intrastate motor carrier population. The NPRM would bring intrastate carriers under full regulation and FHWA does not know how many carriers would be affected by the permit requirements. Oregon can readily identify those parties which would be affected but will other states be able to do so? If PIH/B is added and other classes can be added at anytime, the registration/permit process will become unwieldy without a correspondent increase in highway safety.

There are several issues raised in the NPRM we would comment on even though FHWA has not request specific remarks.

As mentioned above, the definitions could be misleading and/or confusing especially the "in bulk" versus "bulk" identified under 171.8.

FHWA is proposing to make the permit number the same as the Department of Transportation identification number, this makes sense and raises the question, why it was not done for the hazardous material registration. A carrier could have one number with "P" and "R" designations, in addition as many of those affected by the registration requirements/fee will also be those covered by the permit, "one stop" one form registration would seem advisable. Certainly, the consolidation of paper requirements to include a single document (versus two), would be much easier on the motor carrier industry and the issuing agencies.

The permits will be issued upon the carrier receiving a satisfactory rating from the FHWA. The current rating system is difficult to decipher and appears from ratings which we are familiar with to be somewhat arbitrary. FMCSR 385.5 and 385.7 the rating criteria sections allow significant variations by individuals, regions, and headquarters. As a shipper could not move their products on a nonpermitted carrier, we suggest this is a very significant issue.

The issue of fees for the permits is mentioned in passing, i.e., at this time, no fees are envisioned, but they could be imposed at anytime. Carriers are already paying $300 for hazardous material registration fees. If/when imposed, one or the other should be waived/reduced for those parties under both permit and registration systems.

FHWA comments they "intend to establish an information system to provide immediate permit verification by enforcement officials at roadside, or by a shipper, or the public." FHWA does not see this as a major cost item. If verification is accomplished by reviewing the required paperwork, that statement is true, but the wording would seem to suggest some form of new hardware and associated costs thereto.

FHWA also comments they "would not distinguish between US and Canadian products." It is also possible the NPRM could be a contravention of 171.12(a) as there are products which differ in classification between the US and Canada and the rest of the world. As an example, anhydrous ammonia is a 2.2 for U.S. domestic movement only, it is a 2.3 in the rest of the world. Ammonia is a PIH/D so would not be affected by the proposed regulations. However, any expansion could easily encompass this and other products. It is noted the registration process requires foreign shippers to register and it is probable FHWA is following that precedent.

In summary, we strongly recommend including radiological monitoring and adopting the CVSA/DOE inspection criteria (May 17, 1993, edition) in lieu of the proposed adoption of FHWA 396/G criteria; keep the classes as originally proposed in HMT USA, do not expand to PIH/B; review the definitions criteria, i.e., bulk, and bulk versus nonbulk; further explain the meaning of a new information system; and consider consolidating not only the permits but the registrations under the USDOT identification number.

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